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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-1899-SB-2003 (O&M)
Date of decision: 06.05.2024

Kulla Masih and others

... Appellants

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Baltej Singh Sidhu, Sr. Advocate with
Mr. Parveen Jain, Advocate
for the appellants.

Mr. Subhash Godara, Addl. A.G., Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. Present appeal has been preferred against the judgment of conviction dated 04.09.2003 and the order of sentence dated 06.09.2003 passed by learned Additional Sessions Judge, Gurdaspur, in FIR No.85 dated 13.08.1999 under Sections 307 & 323 of the Indian Penal Code (for short 'IPC') read with Sections 148 & 149 of IPC, registered at Police Station Kalanaur, District Gurdaspur, vide which appellants Waris Masih, Satta Masih and Pappi Masih were convicted under Sections 323 & 307 read with Section 34 of IPC and were sentenced to undergo rigorous imprisonment for

a period of 05 years with total fine of Rs.1,000/- each along with default mechanism and appellant Kulla Masih was convicted under Sections 307 & 323 read with Section 34 of IPC and was sentenced to undergo rigorous imprisonment for a period of 07 years with total fine of Rs.2,000/- along with default mechanism.

2. Brief facts of the case are that on 11.08.1999, complainant Darbara Singh and his son Rattan Singh were brought to Police Station Wadala Bangar in an injured condition and on the same day, their medico-legal examination was got conducted from Civil Hospital. They were not in a condition to record their statements and even on the next day i.e. 12.08.1999, they were declared unfit to record their statements. On 13.08.1999, their statements were recorded by ASI Kamal Kishore in Civil Hospital and he reported to the police station that on 11.08.1999 at about 08.30 p.m., complainant and his son were present on the crossing of link road of their village and Kulla Masih, armed with kirpan, Waris Masih armed with Dattar, Satta Masih armed with dang, Pappy Masih armed with dang and accused Rani wife of Kulla Masih, empty handed came there. Rani raised a lalkara to teach a lesson to them not to harvest the paddy crop on account of some money dispute and she caught hold of Rattan and Kulla Masih gave sword blow on the back of head of the complainant. Waris Masih gave dattar blow from the backside, which hit him on his head. Pappy Masih gave dang blow, which hit on the left elbow of son of the complainant Rattan Singh. Satta Masih gave dang blow, which hit on the upper part of right arm of the

complainant. Thereafter, the complainant raised an alarm “*Mar Ditta Mar Ditta*” and on hearing the noise, Kashmir Singh son of Makhan Singh came to their rescue and the accused party ran away from the spot with respective weapons. On the basis of aforementioned statement of the complainant, case was registered against the accused persons under Sections 323, 324, 148, 149 of IPC.

3. Learned senior counsel for the appellants, at the outset, submits that since appellant Kulla Masih has passed away, present appeal qua him may be disposed of as abated.

4. Ordered accordingly.

5. Learned senior counsel on behalf of appellants Satta Masih, Waris Masih and Pappy Masih, contends that he is not assailing the impugned judgment of conviction dated 04.09.2003 on merits and restricts his prayer to modification of the order of quantum of sentence, to that of the sentence already undergone by the appellants, as they have already undergone total sentence of 04 years, 08 months and 05 days and are not involved in any other criminal activity.

6. Per contra, learned State counsel opposes the prayer, as the learned trial Court has passed a well-reasoned judgment based on correct appreciation of evidence available on record and as such, appellants Satta Masih, Waris Masih and Pappy Masih do not deserve any leniency.

7. I have heard learned counsel for the parties and perused the record with their able assistance.

8. In *Deo Narain Mandal Vs. State of UP, (2004) 7 SCC 257*, a three-Judge Bench of the Hon'ble Supreme Court has opined that awarding of sentence is not a mere formality in criminal cases. When a minimum and maximum term is prescribed by the statute with regard to the period of sentence, a discretionary element is vested in the Court. Background of each case, which includes factors like gravity of the offence, the manner, in which the offence is committed, age of the accused, should be considered, while determining the quantum of sentence and this discretion is not to be used arbitrarily or whimsically. After assessing all relevant factors, proper sentence should be awarded bearing in mind the principle of proportionality to ensure the sentence is neither excessively harsh nor does it come across as lenient. Further, a two-Judge Bench of the Hon'ble Supreme Court in *Ravada Sasikala Vs. State of AP, AIR 2017 SC 1166*, has reiterated that the imposition of sentence also serves a social purpose, as it acts as a deterrent by making the accused realise the damage caused not only to the victim, but also to the society at large. The law in this regard is well settled that opportunities of reformation must be granted and such discretion is to be exercised by evaluating all attending circumstances of each case by noticing the nature of the crime, the manner, in which the crime was committed and conduct of the accused to strike a balance between the efficacy of law and the chances of reformation of the accused.

9. A perusal of the judgment of conviction passed by the learned trial Court indicates no perversity in its findings and the same is based on

correct appreciation of evidence available on record. Moreover, learned senior counsel for the appellants has not assailed the judgment of conviction on merits, rather he has restricted his prayer only qua quantum of sentence.

10. The FIR in the present case was lodged on 13.08.1999 and appellants Satta Masih, Waris Masih and Pappy Masih have been suffering the agony of trial since the last about 25 years. Since their conviction, the appellants have grown into a law-abiding citizen and desire to live a peaceful life. As per their custody certificates dated 07.12.2018, they are not involved in any other case and have undergone actual sentence of 01 year and 05 months, out of total sentence of 04 years, 08 months and 05 days in the instant case.

11. Accordingly, this Court is of the opinion that it would be in the interest of justice, if the sentence awarded to appellants Satta Masih, Waris Masih and Pappi Masih is reduced to the period already undergone by them, as appeal qua appellant Kulla Masih stands abated.

12. Consequently, present appeal is disposed of in the following terms:-

- (i) The judgment dated 04.09.2003 passed by learned Additional Sessions Judge, Gurdaspur is upheld, however, the order of sentence dated 06.09.2003 is modified to the extent that the sentence of rigorous imprisonment for five years along with default mechanism awarded to appellants Satta Masih, Waris Masih and Pappi Masih is reduced to the period of sentence

already undergone by them.

- (ii) The sentence of fine of an amount of Rs.1,000/- each imposed upon appellants Satta Masih, Waris Masih and Pappi Masih by learned trial Court is increased to Rs.5,000/- each. They are directed to deposit the increased amount of fine in learned trial Court within a period of one month from the date of receipt of certified copy of this order and in case of default of payment of fine, they shall be liable to be taken into custody and made to undergo rigorous imprisonment for one month.

13. All the pending miscellaneous application(s), if any, shall also stand disposed of.

[HARPREET SINGH BRAR]
JUDGE

06.05.2024
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No